



STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

FRANK J. KELLEY, Attorney General
for the State of Michigan, FRANK J.
KELLEY, ex rel MICHIGAN NATURAL
RESOURCES COMMISSION, MICHIGAN
WATER RESOURCES COMMISSION and
HOWARD A. TANNER, Director of
the Michigan Department of
Natural Resources,

Plaintiffs,

Case No. 79-929-190-CE

-vs-

THIRD PARTY COMPLAINT

CHEMICAL RECOVERY SYSTEMS, INC.,
a Michigan corporation, M. S. & N.
CORPORATION, a Michigan corporation,
NOLWOOD CHEMICAL CORPORATION, a
Michigan corporation, EDWARD W.
LAWRENCE, a Michigan Resident,
A. H. MAGNUS, JR., a Michigan
Resident, ARTHUR B. McWOOD, JR.,
a Michigan Resident, CHARLES H.
NOLTON, a Michigan Resident, and
PETER J. SHAGENA, a Michigan Resident,

Defendants and
Third Party Plaintiffs,

-vs-

PRODUCTS-SOL, INC., a Michigan
corporation,

Third Party Defendant.

NOW COME Defendants, CHEMICAL RECOVERY SYSTEMS, INC.,
a Michigan corporation, M. S. & N. CORPORATION, a Michigan corpo-
ration, NOLWOOD CHEMICAL CORPORATION, a Michigan corporation,
A. H. MAGNUS, JR., a Michigan Resident, ARTHUR B. McWOOD, JR., a
Michigan Resident, CHARLES H. NOLTON, a Michigan Resident, and
PETER J. SHAGENA, a Michigan Resident, by and through their
attorneys, MURPHY, BURNS & McINERNEY, P.C., and for their Third
Party Complaint against PRODUCTS-SOL, INC., a Michigan corporation.

(PRODUCTS-SOL), states as follows:

GENERAL ALLEGATIONS

1. Defendant, Chemical Recovery Systems, Inc., is a Michigan corporation with offices at 36345 Van Born Road, Romulus, Michigan.
2. Defendant, M. S. & N. Corporation, is a Michigan corporation with offices at 28780 John R, Madison Heights, Michigan.
3. Defendant, Nolwood Chemical Corporation, a Michigan corporation with offices at 8970 Hubbell, Detroit, Michigan.
4. Defendant, A. H. Magnus, Jr., is a resident of the State of Michigan, residing at [REDACTED]
[REDACTED]
5. Defendant, Arthur B. McWood, Jr., is a resident of the State of Michigan, residing at [REDACTED]
[REDACTED]
6. Defendant, Charles H. Nolton, is a resident of the State of Michigan, residing at [REDACTED]
[REDACTED]
7. Defendant, Peter J. Shagena, is a resident of the State of Michigan, residing at [REDACTED] [REDACTED]
8. That during late 1970 or early 1971, Cam Chem Company, a Michigan corporation, owned the property which is the subject matter of this Complaint, commonly referred to as 36345 Van Born Road, Romulus, Michigan.
9. During 1967, Marathon Finance Company, a Delaware corporation, conveyed the property located at 36345 Van Born Road,

Romulus Township, Wayne County, Michigan, by Warranty Deed to Cam Chem Company, a Michigan corporation.

10. That until late 1970, Cam Chem Company owned the property located on Van Born Road and operated a chemical recovery company.

11. That during this period of time, Cam Chem Company dumped thousands of gallons of chemical wastes, sludges, residues from their refining process, and industrial liquid wastes, on the ground in violation of applicable state laws.

12. During early 1971 or late 1970, Cam Chem Company conveyed ownership of all outstanding stock, assets and liabilities of the company to Products-Sol Company, a Michigan corporation.

13. During the year of 1971, until approximately November 25, Products-Sol Company operated a chemical recovery process on the property located at 36345 Van Born Road.

14. Products-Sol Company, dumped and stored chemical wastes, sludges, residues and industrial wastes in and on said property, in violation of applicable state statutes and laws.

15. The production and manufacturing process which took place on the property by Cam Chem Company and Products-Sol Company produced a by-product which is highly toxic and is a hazardous substance.

16. Upon information and belief, the chemical industrial wastes generated by Cam Chem Company and Products-Sol Company include, among other chemical constituents, the following:

(1) Dichloroethane, (2) Dichloroethane, (3) Trichloroethane, (4) Trichloroethylene, (5) Toluene, and other aliphatic chlorinated hydrocarbons; (6) Benzene, Toluene, Xylene, Phenol, (7) Methyl

Ethyl Ketone, (8) Methyl Isobutyl Ketone. All of the above chemical by-products were discharged into and onto the property and leached into the ground water causing serious contamination of the property located at 36345 Van Born Road, Romulus, Michigan.

17. That on or about October 23, 1968, the Water Resources Commission for the State of Michigan issued Cam Chem Company an Order of Determination, Order No. 1212, which provided guidelines for the use of the waters of the State of Michigan and for discharge to these waters.

18. That the Order of Determination imposed specific limitations on Cam Chem Company. That a copy of the Order of Determination is attached hereto and incorporated herein as Exhibit A.

19. That on or about November 9, 1970, the Department of Natural Resources wrote a letter to a Mr. Frederick Campbell, President of Cam Chem Company, which stated as follows:

"[G]round and surface water samples were collected in and adjacent to Trouton Drain on August 18, 1970. The quality of the water in an open ditch (located adjacent to Trouton Drain but completely within the company property) and chemical analyses of the groundwater samples taken from the dry bed of Trouton Drain suggested groundwater contamination of organic liquids containing phenol or phenolic compounds....

The groundwater survey made on August 30, 1970 was conducted completely within the confines of Cam Chem Company property.

Based on the findings of the August 30, 1970 survey... the groundwater within the confines of Cam Chem Company property flows locally... into Trouton Drain.... Chemical analyses of the groundwater samples collected in conjunction with the August 30, 1970 survey help to substantiate the direction of groundwater movement. This data along with the groundwater elevation readings obtained strongly indicate that the company's liquid waste holding pond located near the processing facilities provides recharge fluids to the local groundwater.

The surveys revealed that industrial liquid wastes containing high concentrations of organic substances are being lost to the waters of the State via the ground water route from the Cam Chem Company's operating facilities. This situation appears contrary to Section 2 of Order of Determination No. 1212 issued to your company on October 23, 1968....

* * *

The above detailed account is brought to your personal attention so that you may be fully appraised of our findings. This situation is of great concern and is considered to be serious. We are, therefore, very anxious to hear from you concerning measures taken to effectively correct the apparent liquid waste loss from the Company's waste holding pond to the ground waters...."

20. That on or about this time, Products-Sol Company purchased the Cam Chem Company and commenced operation and continuation of operations of Cam Chem Company at 36346 Van Born Road, Romulus, Michigan.

21. That Products-Sol Company knew of the acts of Cam Chem Company and, based on information and belief, was well advised of the condition of the property when they purchased the same.

22. That between the time of purchase by Products-Sol Company and November 1971, when Defendant Nolwood Chemical Corporation purchased Cam Chem Company from Products-Sol Company, Products-Sol Company as the owner and operator of Cam Chem Company, continued to pollute the ground and ground waters on and around 36345 Van Born Road, creating four ponds on said property and continuing to discharge dangerous and toxic materials into the pond referred to as the "vinyl pond" located on said property.

23. That these acts by Third Party Defendant constituted serious violations of the outstanding Order of Determination and materially and substantially affected the environmental balance in and around said property and ground water.

24. If and to the extent that the property located at 36345 Van Born Road, Romulus, Michigan is presently contaminated, it was a result of the acts and/or omissions of Third Party Defendant hereinafter alleged.

24. On or about August 20, 1979, Plaintiffs, the State of Michigan, et al., commenced this action against Defendants, Chemical Recovery Systems, Inc., et al., seeking, among other things, preliminary and permanent injunctive relief which would compel Defendants to: "(1) completely eliminate the contaminated, sand-lined seepage lagoons on their property, known as the 'vinyl pond' and the 'east pond,' and safely remove, transport, and dispose of the contaminated liquid, semi-solid, and solid materials contained therein, and at least 83,800 cubic yards of contaminated soil from beneath the sand-lined seepage lagoons and from other areas of Defendants' property; (2) backfill the excavated areas with clean fill and regrade the surface of their property to prevent future contamination of Trouton Drain and Ecorse Creek; (3) remove all contaminated sludges and abate any existing sediment contamination of Trouton Drain and Ecorse Creek, and return Trouton Drain and Ecorse Creek to the state in which they existed prior to the commencement of operations on Defendants' property; (4) extend and make all corrective modifications of the ground water intercept tile system on Defendants' property necessary to assure that all contaminated ground water flows to and is collected by the ground water intercept tile; (5) reduce and maintain their inventory of waste drums to no more than 2,500 at any one time, and install the secondary containment for all

storage areas necessary to prevent future contamination of Trouton Drain and Ecorse Creek." In addition, Plaintiffs ask that Defendants be ordered to: "(1) implement and complete the foregoing measures pursuant to a firmly scheduled timetable, and be assessed a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day they are in violation of any provision of that timetable; (2) pay all damages necessary to compensate the people and the State of Michigan for Defendants' pollution, impairment, and destruction of the environment; (3) pay all costs of this action including the costs and salaries paid state employees for the investigation and enforcement of this litigation; (4) scrupulously comply with all state statutes, rules and permits governing Defendants' operations.'

25. As a result of the actions and omissions of Third Party Defendant, Defendants Chemical Recovery, et al. have expended great sums of money in order to abate the conditions created in and around the site located at 36345 Van Born Road, and is now exposed to substantial potential liability in favor of Plaintiffs herein, and has sustained and will sustain great damage and injury to its property, business profits and goodwill.

COUNT I. STRICT LIABILITY

26. That Third Party Plaintiffs incorporate by reference Paragraphs 1-25 herein.

27. If and to the extent that Plaintiffs', State of Michigan, et al., allegations herein with respect to the toxicity of the materials involved are established, then those materials, chemical by-products, industrial wastes, constitute ultrahazardous and/or abnormally and unreasonably dangerous substances and the manufacturer of those chemicals and chemical by-products herein-before described and disposal thereof on the property in question

constitute ultrahazardous and/or abnormally and unreasonably dangerous activities.

28. Products-Sol (successor to Cam Chem), producer of and generator of the chemical by-products mentioned herein, is the party best able to adopt preventive measures to guard against harm caused by those materials and is the party best able to bear the cost and expense of any damage resulting from the manufacture and disposal of those wastes in and around the Van Born Road property.

29. If and to the extent that Plaintiff's allegations herein with respect to the manufacture, disposal and storage of the chemical by-products and wastes mentioned herein were manufactured, disposed and stored and generated by Third Party Defendant and the actions or omissions of Third Party Defendant alleged herein have resulted in the contamination of this site and its surrounding environs and have caused and will cause great damage and injury to Third Party Plaintiffs for which Third Party Defendant is strictly liable.

COUNT II. FAILURE TO WARN

30. Third Party Plaintiffs incorporate by reference Paragraph 1-29 herein.

31. If and to the extent that it is established that the chemical by-products and wastes mentioned herein are ultrahazardous and/or abnormally and unreasonably dangerous because toxic and hazardous properties are established, Third Party Defendant had a duty to warn Third Party Plaintiffs of the dangers and risks associated with the purchase of 36345 Van Born Road and the storage and disposal facilities utilized by Third Party Defendants.

32. Third Party Defendant has breached such duty by failing to warn Third Party Plaintiffs of such dangers and risks.

33. As a result of the breach of said duty by Third Party Defendant, Third Party Plaintiffs have sustained and will sustain in the future great damage and injury.

COUNT III. BREACH OF CONTRACT
AND FRAUDULENT MISREPRESENTATION

34. Third Party Plaintiffs incorporate by reference Paragraphs 1-33 herein.

35. That Cam Chem Company, during 1971 and at the time of sale to Third Party Plaintiffs, was owned by Products-Sol, Inc., a Michigan corporation, and they were responsible for the liabilities of Cam Chem.

36. That during November 1971, Cam Chem Company and Nolwood Chemical Corporation entered into an agreement for the sale of Cam Chem to Nolwood.

37. That the agreement contained specific covenants, agreements, representations, and warranties concerning the properties passing from Cam Chem (Products-Sol) to Nolwood.

38. That the Third Party Defendant induced the Third Party Plaintiffs to enter this agreement by falsely representing that the company was operated in accordance with the laws of the State of Michigan and that there were no problems with the regulatory and enforcement agencies of the State of Michigan. Further, the Third Party Defendant falsely represented that all property was being sold free and clear of any claims, interest, restrictions and encumbrances.

39. That the contaminations of the waters of the above-described property; the failure to comply with all regulations,

orders, and laws of the State of Michigan; made the above material representations to Nolwood, false.

40. That the Third Party Defendant, by its actions, knew that the above material representations, and/or material misrepresentations, were false or the Third Party Defendant made these representations, and/or misrepresentations, recklessly, without any knowledge of their truth, and as a positive assertion.

41. That the Third Party Defendant made these representations, and/or material misrepresentations, with the intention that the Third Party Plaintiffs should act or rely upon them.

42. That the Third Party Plaintiffs acted in reliance upon these material representations, and/or material misrepresentations, by executing the Purchase Agreement between the parties.

43. That the Third Party Plaintiffs have sustained substantial injury because of such reliance, inter alia, extensive legal investigation, administrative costs, consultation fees, and other costs. In addition, Third Party Plaintiffs are and may incur substantial civil exposure and expense in the case resulting from the Plaintiff's suit.

44. That if contamination has taken place, the Third Party Defendant is materially and substantially responsible for any contamination to both the Plaintiffs and the Third Party Plaintiffs.

45. That the Third Party Plaintiffs have only discovered the fraudulent nature of the Third Party Defendant's material representations and/or material misrepresentations since the summer of 1979.

46. That the quality of the land and its waters and Third Party Defendant's negligent acts and/or reckless and inten

actions were of a nature that could not reasonably have been known and were hidden defects.

COUNT IV. NUISANCE/NEGLIGENCE

47. Third Party Plaintiffs incorporate by reference Paragraphs 1-46 herein.

48. That Third Party Defendant, in the past, did business at 36345 Van Born Road, Romulus, Michigan; Third Party Defendant is the predecessor in interest to the Third Party Plaintiffs, and it acquired the assets & liabilities of Cam Chem at a prior time.

49. That in November of 1971, Nolwood Chemical Corporation purchased the business and assets of the Third Party Defendant.

50. That the actions referred to in the Complaint and Third Party Complaint occurred at the above-referenced facility located in Romulus, Wayne County, State of Michigan, and the actions of the Third Party Defendant and/or non-actions, materially and substantially contributed to the issues presently at bar.

51. That for a period of time prior to November of 1971, Third Party Defendant operated a chemical refining plant. That as a by-product of the Third Party Defendant's chemical refining plant, a great volume of waste, and/or effluent, including but not limited to, Benzene, 1, Dichloroethane, 1, 2 Dichloroethane, Dichloromethane, Methyl Base Ethyl Ketone, Methyl Isobutyl Ketone, Perchloroethylene, Phenol, Toluene, 1, 1, 1 Trichloroethane Trichloroethane, Vinyl Chloride, and Xylene and other chemical by-products which were discharged into the property and ground water of said Third Party Defendant's property located in Romulus, Michigan.

52. That on or about October 25 1968, the Water

Resources Commission issued Third Party Defendant an Order of Determination (Order No. 1212), which provided guidelines for the use of the waters of the State of Michigan and for discharge of these waters.

53. That the Order of Determination imposed specific limitations on the Third Party Defendant. That a copy of the Order of Determination is attached hereto and incorporated herein as Exhibit A.

54. That for several years the Third Party Defendant discharged and/or disposed of waste, waste effluents, contaminated waste water, and other chemicals hereinabove described, in a negligent manner in violation of said Order of Determination. The total volume discharged by said Third Party Defendant was in excess of that authorized in their Order of Determination, and the volume and manner of discharge violated the regulations of the State of Michigan then in effect. Further, that these violations materially and substantially effected the environmental balance in and around said property and ground water.

55. That the chemicals which were discharged and the other violations of the Order of Determination contaminated and continue to contaminate the waters in and around said property. The aforementioned acts of said Third Party Defendant, in addition thereto, caused or created deposits of high chemical levels in, around, and under said property, all of which continue to substantially contribute to and/or cause contamination. The aforementioned acts constituted a violation of the laws of the State of Michigan in effect at the time, constituted a violation of the Order of Determination as aforementioned, and are a direct cause of the Plaintiff's claim against Third Party Plaintiff.

56. That if, as the Plaintiffs allege there is

contamination of Trouton Drain, Ecourse Creek, and the ground waters of this State, said contamination has been, and continues to be, caused by Third Party Defendant's negligent actions and "nuisance" by violating the laws of the State of Michigan.

57. That as a result of the Third Party Defendant's actions which constitute "nuisance" and negligence, the Third Party Plaintiffs have incurred substantial expense, including: legal fees, investigative and administrative costs, consulting fees, and other costs.

58. That as a result of the Third Party Defendant's acts as aforementioned, the Third Party Plaintiffs are and may incur substantial civil exposure and expense in the principle cause of action of the case at bar, and if contamination has taken place, the Third Party Defendant is materially and substantially responsible for said damage to both the Plaintiffs in the principal cause of action and the Third Party Plaintiffs.

59. That as a result of the Third Party Defendant's acts, they are liable to the Third Party Plaintiffs for all of the claims made in the action against the Third Party Plaintiffs in the principal cause of action.

60. That the Third Party Plaintiffs' cause of action against the Third Party Defendant arises out of the same transaction or occurrence that is the subject matter of the Plaintiff's claim against the Third Party Plaintiffs in the principal case.

COUNT V. MICHIGAN ENVIRONMENTAL PROTECTION ACT

61 Third Party Plaintiffs incorporate by reference Paragraphs 1-60 herein.

62. If and to the extent that Plaintiffs', State of

Michigan, et al., allegations herein with respect to the chemical by-products and wastes discussed hereinbefore are established, then the manufacture and generation, disposal and storage by Third Party Defendant, and that further acts and omissions alleged herein, have resulted in the pollution, impairment and destruction of the water, land and other natural resources of the State of Michigan and the public trust therein contrary to the Michigan Environmental Protection Act (MEPA), 1970 PA 127, MCLA 691.1201 et seq, and the duty imposed on Third Party Defendant thereunder to conduct its activities so as to minimize and prevent harm to, and degradation of, the environment, for which Third Party Plaintiffs are entitled to declaratory and injunctive relief.

COUNT VI. INDEMNITY

63. Third Party Plaintiffs incorporate by reference Paragraphs 1-62 herein.

64. With respect to the allegations of Plaintiffs, State of Michigan, et al., herein, Third Party Plaintiffs were without fault, having at all times acted in good faith and without specific knowledge regarding the nature and character of the "environmental time bomb" planted by Third Party Defendant, and without specific knowledge concerning the nature and character of the stored chemical by-products on and under said property. In addition, Third Party Plaintiffs specifically relied upon the expertise, experience, and representations of Third Party Defendant regarding the manufacture, generation, storage and disposal of those wastes discussed hereinbefore.

65. As between Third Party Defendant and Third Party Plaintiffs, Third Party Defendant is the party best situated to adopt preventive measures regarding the disposal, storage and

generation of the chemical and toxic wastes hereinbefore mentioned and is thereby best able to reduce the likelihood of harm resulting therefrom.

66. As a result of the actions and omissions of Third Party Defendant, Third Party Defendant is primarily liable for all damages, penalties, fines and relief sought by Plaintiffs, State of Michigan, et al., herein against Third Party Plaintiffs and Third Party Plaintiffs are entitled to be indemnified by Third Party Defendant with respect thereto.

67. As a result of the actions and omissions of Third Party Defendant, Third Party Plaintiffs are entitled to be indemnified by Third Party Defendant against any and all losses, costs and expenses, including attorneys fees, incurred by Third Party Plaintiffs in connection with this action or its ownership of said property.

COUNT VII. CONTRIBUTION

68. Third Party Plaintiffs incorporate by reference Paragraphs 1-67 herein.

69. In the alternative to the previous Count hereof, if and to the extent Third Party Plaintiffs are liable for the breaches of any duties and/or statutory violations alleged by Plaintiffs, State of Michigan, et al., herein, Third Party Defendant commonly contributed with Third Party Plaintiffs to any and all such breaches of duty and statutory violations and in, therefore, liable to contribute with Third Party Plaintiffs its equitable shares of all costs, damages, penalties, fines, losses or expenses assessed against or incurred by Third Party Plaintiffs in connection with this action.

RELIEF REQUESTED

WHEREFORE, Third Party Plaintiffs pray that this Court grant the following relief:

A. With respect to Counts I through IV:

1. Enter a judgment for damages against Products-Sol, Inc. for whatever amount Chemical Recovery Systems, Inc., et al., are found to be entitled.

2. Issue a mandatory permanent injunction requiring Products-Sol, Inc. to take whatever measures are necessary to remove any and all chemical wastes from the site, to remove all materials, soils and sediments in and around the site contaminated by their wastes, to do all things necessary to restore the site to its condition prior to the storage and disposal of the wastes mentioned herein, and to perform all acts sought by Plaintiffs to be performed by Chemical Recovery Systems, Inc., et al., in the Complaint.

3. Award Chemical Recovery Systems, Inc., et al., the costs of this action, including attorney fees.

4. Award Chemical Recovery Systems, Inc., et al., such other and further relief as the Court deems just and proper.

B. With respect to Count V:

1. Enter a judgment declaring that the actions and omissions of Products-Sol, Inc. as alleged herein have resulted in the pollution, impairment and destruction of the natural resources of the State of Michigan contrary to NEPA.

2. Enter a mandatory permanent injunction requiring Products-Sol, Inc. to take whatever measures are necessary to remove all chemical wastes from the site, to remove

all materials, soils and sediments in and around the site contaminated by their chemical wastes, to do all things necessary to restore the site to its condition prior to the storage and disposal of said wastes, and to perform all acts sought by Plaintiffs to be performed by Chemical Recovery Systems, Inc., et al., in the Complaint.

3. Award Chemical Recovery Systems, Inc., et al., the costs of this action, including attorney fees.

4. Award Chemical Recovery Systems, Inc., et al., such other and further relief as the Court deems just and proper.

C. With respect to Count VI:

1. Enter a judgment declaring that Chemical Recovery Systems, Inc., et al., is entitled to indemnity from Products-Sol, Inc. in ordering Products-Sol, Inc. to indemnify Defendants and Third Party Plaintiffs against any and all damages, fines or penalties and any and all losses, costs, expenses or claims, including attorneys fees, assessed against, incurred by or asserted against Chemical Recovery Systems, Inc., et al., in connection with this action or related clean-up of the site and its surroundings.

2. Award Chemical Recovery Systems, Inc., et al., the costs of this action, including reasonable attorneys fees.

3. Award Chemical Recovery Systems, Inc., et al., such other and further relief as the Court deems just and proper.

D. With respect to Count VII:

1. As an alternative to the relief requested with respect to Count VI:

(A) Enter a judgment declaring that Defendants

and Third Party Plaintiffs are entitled to a contribution from Products-Sol, Inc. for all damages, fines and penalties assessed against Products-Sol, Inc. against Defendants and Third Party Plaintiffs, and for all losses, costs and expenses incurred by Third Party Plaintiffs and Defendants in connection with this action concerning the site and related clean-up of the site and surroundings, and order Products-Sol, Inc. to so contribute.

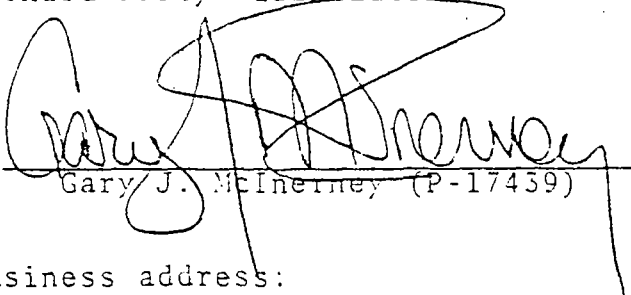
(B) Award Chemical Recovery Systems, Inc., et al., the costs of this action, including attorney fees.

(C) Award Chemical Recovery Systems, Inc., et al., such other and further relief as the Court deems just and proper.

DATED: September 24, 1979

MURPHY, BURNS & McINERNEY, P.C.
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Third Party Plaintiffs

By


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